SPEECH

OF

MR. BADGER, OF N. CAROLINA,

DELIVERED

IN THE SENATE OF THE UNITED STATES, MAY 11, 1854,

ON THE

PRESIDENT'S VETO MESSAGE.

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PRESIDENT'S VETO MESSAGE.

Mr. BADGER said:

Mr. PRESIDENT: The Constitution of the United States having provided that when the President of the United States does not approve a bill which has passed both Houses of Congress, he shall return it to the House in which it originated, with his objections thereto, and that the House shall proceed to reconsider the bill, it follows as a necessary inference that it was the purpose of the Constitution that the House so reconsidering a bill, should give a careful and respectful attention to the objections taken by the President, and thus in pursuance of the Constitution sent to that body. The provision of the Constitution would otherwise be unmeaning. For it does not authorize the President to disapprove merely, and then require a reconsideration, but it makes it his duty, with the disapproval, to communicate in writing his objections. Therefore, as I have already said, it becomes not only the right, but the duty, of the body to which the bill is returned, carefully to consider the objections of the President.

It is my purpose this morning to discharge, so far as I am concerned, the duty which devolves upon us of giving that careful examination to the objections of the President to the bill for the benefit of the indigent insane; to submit views which to me appear to be just, to be demanded by the importance of the matters embraced in the message, and which show, as I think, that the objections taken by the President have no foundation. It is manifest, Mr. President, that, in discharging this duty, high courtesy towards the official functionary at the head of the Government demands that the investigation should meet the objections of the President, so far as we understand them, upon their true merits; and that no attempt should be made to resort to mere questions of words, no effort to withdraw the attention of the Senate or the country from the principles which are really at stake; but that, on the contrary, disregarding all minor topics, putting the dialectics of verbal criticism entirely aside, we should consider, fairly and respectfully, the objections which the President has felt it his duty to make, according to their substance and intended import. That duty I shall endeavor to discharge in the manner and with the spirit I have indicated. This belongs to my position as a member of this body, and this I would not willfully disregard if I did not occupy that position.

If I understand the message of the President of the United States aright, he objects to the passage of the bill providing for the indigent insane upon the ground, first, that Congress has no power under the Constitution to devote any portion of the public domain to the purposes indicated in the bill; and, in the next place, if the bill were free from that objection, if the Constitution did authorize an application of a portion of these lands to the general purposes specified in the bill, yet *this* measure is obnoxious to a constitutional objection, because the subsidiary provisions of the bill, which undertake to carry out its general object, assume an unconstitutional authority over, and interfere in an improper manner with, those local concerns which, under the Constitution, belong exclusively to the States.

Now, Mr. President, with regard to the first question—of the general constitutional power—it seems to me that there are several considerations adverted to by the President, in his message, which may be laid entirely aside. It is manifest, in the first place, that no one claims or asserts the power of Congress to dispose of the public domain under the first clause of the eighth section of the first article of the Constitution, which gives to Congress the power of laying duties and imposts, and other taxes; therefore, it is a matter entirely immaterial to the present discussion whether the expression, "to provide for the common defense and general welfare," following that grant of power, is to be construed in the nature of a new grant, enlarging and in addition to what was previously expressed, or as a limitation upon the power of taxation, or as a directory provision as to the ends for which the money raised shall be applied.

Mr. President, in the next place, on this part of the case, we are troubled with no investigation

about what are, or what are not, the reserved rights of the States, because when we speak of the reserved rights of the States, of the individual States, the separate members of the Union, we mean rights which belong to them in their separate capacity, and which could have been exercised by them separately, but for the creation of the Union, and the establishment of the Constitution which followed it; but no right could ever exist in any individual State to dispose of the land or other property belonging to the United States. Indeed, until they became "the United States" there could be no such thing as the possession of property by them in that political character.

Therefore, I think these preliminary difficulties suggested and thrown out in the message may be laid aside. The power over the public domain, whatever it may be, is conferred by a distinct provision of the Constitution. It does not fall in with the enumeration of legislative powers contained in the first article of the Constitution which relates to the organization and authority of the legislative branch of the Government. It is a power conferred in the fourth article of the Constitution—a power conferred after the Constitution has made all its general arrangements with respect to the legislative, the executive, and the judicial branches of the Government. In this fourth article, containing various miscellaneous provisions, in the second clause of the third section, the Constitution gives the power, whatever it is, in these words:

"The Congress shall have power to dispose of, and make all needful rules and regulations respecting, the territory or other property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular State."

The last words contain the only provision of restriction, limitation, or qualification on the power which was granted by the previous words of that section. What was meant by that qualification? We are told by Mr. Madison, in the Federalist, that what were referred to by that provision, and what rendered that provision necessary, were certain jealousies and questions in the States respecting the western lands, to which, as is well known, conflicting titles and claims were set up. Therefore, the only effect, meaning, or intent that can be possibly assigned to it is, that nothing in this Constitution shall be so construed as to prejudice any claims of any particular State to any portion of territory then in the possession of the United States, or to lands claimed by different States, and thus to confine the whole operation of this power to what was rightfully the property of the United States as such.

Every word in that grant of power is worthy of consideration. In the first place, the subject-matter is spoken of as "the property of the United States." "The Congress shall have power to dispose of"—leaving out the words about making regulations which are in no way material to the present inquiry. "The Congress shall have power to dispose of the territory or *other property belonging* to the United States." The territory, therefore, is treated as the "property of the United States." It is the largest word that can be used to express dominion, ownership, title. It is used in its appropriate, legal signification, not as ex-

title is supposed to exist, but the very title, dominion, right of possession, control, and enjoyment in the territory. It is as the "property of the United States" that the clause provides for it.

Now, sir, the United States, thus owning this territory, had what? Why, they had, like every other owner, the right to dispose of it—the *jus disponendi*—the essential attribute of true ownership, without which property in anything cannot, in a proper sense, be said to exist; for, in strictness, if there be an owner who is competent to act, he must have power to dispose of what he owns; this power was in the United States in its fullest sense, as the true and absolute owners of the territory.

Now, what disposition have the United States made of this, their property? They have granted to Congress the power to dispose of it. The *jus disponendi*, whatever it was that attaches to true ownership, and which belonged to the United States in their political capacity as the owners, is by the United States, in their Constitution, devolved upon Congress without limitation of any kind whatever.

Is it not manifest, then, Mr. President, that when the question arises with regard to the power of Congress, under the clause as it stands in the Constitution, they who affirm that there is any particular limitation upon this power of disposing are bound to show it. The power is exclusive in Congress. From the very nature of the case, it could not have been, and cannot be exercised by the individual States. It would, therefore, be an absurdity to suppose that it could form any portion of the rights reserved to the States. It is a power which exists somewhere. In the very nature of the case, it must exist somewhere. It belonged to the political sovereignty designated as "the United States of America," and these United States have devolved that power, by the terms of this grant, upon the Congress of the United States. It is not a question about disputed power. It is not an inquiry of interpretation. We are not engaged in investigating whether we can deduce or infer power over the public lands, as falling naturally, and appropriately, and necessarily within some power that is expressly granted. There is an express grant, in terms, of this power—this whole power—to Congress. This power was in the United States, and never in the State sovereignties, as such, and this power, by the Constitution, is vested exclusively in Congress, without any declared qualification.

Mr. President, I think that a rule laid down by Mr. Calhoun, in his posthumous work upon government, in relation to another subject, furnishes a very clear and safe ground for interpreting this grant of power, and supports the general view I have taken. On the 202d page of his treatise he thus expresses himself:

"There is a very striking difference between the manner in which the treaty-making and the law-making power, in its strict sense, are delegated, which deserves notice. The former is vested in the President and Senate by a few general words, without enumerating or specifying particularly the power delegated. The Constitution simply provides that he shall have power, by and with the advice and consent of the Senate, to make treaties, provided two thirds of the Senators present concur; while the legislative powers vested in Congress, are, one by one, carefully enumerated and specified. The reason is to be found in the fact, that the treaty-making power is vested, *exclusively*, in the Gov-

was necessary in delegating it, than to specify, as is done, the portion or department of the Government in which it is vested. It was then not only unnecessary, but it would have been absurd, to enumerate specially the powers embraced in the grant. Very different is the case in regard to legislative powers. They are divided between the Federal Government and the State Governments, which made it absolutely necessary, in order to draw the line between the delegated and reserved powers, that the one or the other should be carefully enumerated and specified; and, as the former was intended to be but supplemental to the latter, and to embrace the comparatively few powers which could not be either exercised at all, or if at all, could not be so well and safely exercised by the separate governments of the several States, it was proper that the former, and not the latter, should be enumerated and specified. But, although the treaty making power is exclusively vested, and without enumeration or specification, in the Government of the United States, it is nevertheless subject to several important limitations."

The first limitation, he then states, is "to questions *interalios*," and then, in the second place, it is to be limited; but I will give his own words:

"It is, in the next place, limited by all the provisions of the Constitution which inhibit certain acts from being done by the Government, or any of its departments—of which description there are many. It is also limited by such provisions of the Constitution as direct certain acts to be done in a particular way, and which prohibit the contrary; of which a striking example is to be found in that which declares that 'no money shall be drawn from the Treasury, but in consequence of appropriations to be made by law.'"

Then he states that, by a necessary limitation, implied, though not expressed, the treaty-making power of the country cannot be used to destroy or alter the Constitution or government under which it is exercised.

Now, sir, I ask the attention of the Senate for one moment to this statement. The power of making treaties, Mr. Calhoun says, is a power *exclusively* vested in the Government of the United States. It was a power that either could not be exercised at all by the separate States, or not so well and conveniently; and, therefore, the *whole power* was given to this Government. Hence, he says, there was no necessity for entering into an enumeration of particulars; it would have been absurd; the whole is given. It is an *express* power, and an *exclusive* power, and, therefore, it is subject to no limitations, in his judgment, but those which he has specified as growing necessarily either out of the nature of the power granted, or out of express inhibitions elsewhere contained in the Constitution, or out of the necessity of preserving intact the Constitution itself under which the power is exerted. But, as he says, with regard to legislative powers, divided between this Government and the States, with respect to these, an enumeration of one class on the other was necessary, and those granted to Congress were selected as the powers more convenient and more proper for enumeration.

Now, sir, how exactly is that the case with regard to the grant of power over the public lands. It is not among the general enumerated legislative powers of Congress. It is a power *exclusively* in Congress. It is a power that never was in the States *separately*, and therefore could not be *reserved* to the States under the Constitution. It was a power that could not be exercised by the States separately at all, or it could not be exercised, at least, without manifold inconvenience, and therefore the Constitution vests it in Congress, vests it expressly, and vests it without limitation; and, from the very nature of the case, it cannot be held subject to any constitutional limitation, unless such an implied limitation as those, or some of those, which are mentioned by Mr. Calhoun.

The power being thus distinct, exclusive, express, unqualified, granted in the largest terms to dispose of without restriction or limitation, to give, to sell, or to use, the property which is the subject of this grant, just as an owner in fee-simple used his own estate, where is the limitation upon it? I am now speaking about the grant of power by the Constitution. There is another view of the subject of which I shall speak presently. Where is the limitation? Where can you find a restriction in this instrument? There is the provision unqualified. If the power to make treaties be thus absolute, and subject to no other than those necessary and inevitable restrictions suggested by Mr. Calhoun, how does it happen that the power to dispose of the public lands, granted in equally broad terms, is not coextensive in its largeness with the treaty-making power? As Mr. Calhoun argues, this is an express grant of an exclusive power; therefore, all the treaty-making power is in the President, by and with the advice and consent of the Senate. Whatever may be done by a treaty, may be done by the President, by and with the advice and consent of the Senate, unless it is, among other things, to exercise a power which the Constitution inhibited to the Government or any of its branches, or where a thing is authorized to be done in a particular manner, and prohibited in any other, or where the power is sought to be used for the purpose of destroying or altering the Constitution. Where, then, are there any limitations upon this power over the lands? If the United States of America, as a political sovereignty, own property, they undoubtedly have power to sell or otherwise dispose of it, to sell it for whatsoever they please, and to give it to whomsoever they please. Well, whatever their power was, they have devolved it upon Congress in express, unmistakable terms.

This, sir, has been the opinion not only of statesmen, but of sound and enlightened jurists. Mr. Justice Story, in his work upon the Constitution, says:

"The power of Congress over the public territory is *clearly exclusive and universal*: and their legislation is subject to no control, but is *absolute* and *unlimited*, unless so far as it is affected by stipulations in the cession, or by the ordinance of 1787, under which any part of it has been settled."—*Sec.* 1328.

Such, Mr. President, seems to have been the opinion of General Jackson. In his message to Congress at the commencement of the session of 1832, you will find this language:

"Among the interests which merit the consideration of Congress, after the payment of the public debt, one of the most important, in my view, is that of the public lands. Previous to the formation of our present Constitution, it was recommended by Congress that a portion of the waste lands owned by the States should be ceded to the United States, for the purposes of general harmony, and as a fund to meet the expenses of the war. The recommendation was adopted; and, at different periods of time, the States of Massachusetts, New York, Virginia, North and South Carolina, and Georgia, granted their vacant soil for the uses for which they had been asked. As the lands may now be considered as relieved from this pledge, the *object* for which they *were ceded having been accomplished, it is in the discretion of Congress to dispose of them in such way as best to conduce to the* QUIET, HARMONY, AND GENERAL INTEREST of the American people. In examining this question, *all local and sectional feelings should be discarded, and the whole United States regarded as one people, interested alike in the prosperity of their common country.*"

Surely it is impossible to express the power in more large and comprehensive terms. Beyond all doubt, Mr. President, Congress is bound, in the exercise of every power, and the President in making treaties is bound in the exercise of that power, constantly to bear in mind the purpose for which this Constitution was formed, as set out in the preamble; and all these powers, however absolute in the form of the grant, and however absolute in point of fact they may be—I mean as to the naked power—are always to be used, and can only be rightfully used, for the purpose of accomplishing the great ends, or some of them, of establishing justice, insuring domestic tranquillity, providing for the common defense, promoting the general welfare, and securing the blessings of liberty which the Constitution, in its preamble, declares to have been the motive for its formation. It is so with every power. Congress has power to declare war; it is an unlimited power. If Congress should declare an unjust war—a war of mere aggression and pure ambition, springing solely from a lust of acquisition and power—however the motives of Congress might be questioned for having exercised the power for such ends and for such purposes, it would be a lawful declaration of war—a legal, though unjust, exercise of power. Congress is authorized to levy duties, and in the exercise of that power they ought to levy them with a just regard to the interests of the whole country; but beyond all doubt, if Congress should pass a law by which those articles that the interests of the country require should have duties levied upon them should be let in free, and articles which the interests of the country require should come in free should be subject to a heavy duty, Congress would most wrongfully have used the power confided to them; but the power could not be impaired by that consideration, and the law would undoubtedly be a valid law—unjust, it is true, because unequal and unfair, but yet a binding and obligatory act of legislation, because within the granted power.

Sir, the President, in his veto message, has referred to two instances as the only two in which grants of land have been made for purposes similar to those contemplated by this bill. I wish to draw the attention of the Senate to the circumstances under which those two bills were passed. As he has called attention, in the veto message, to the fact that those bills were passed many years after the Constitution was formed, I beg to remind the Senate that they were passed at least many years nearer to the formation of the Constitution than the year 1854; and if the value of an act, as an exposition of the Constitution, depends upon its nearness, its proximity, to the time when that instrument was formed, we certainly have no right to claim any superior advantage for the exposition we may give over these, given, as they were, nearer by many years to the era of the Constitution itself. And it must be remarked, further, that at the time when these acts—the act for the Kentucky and for the Connecticut asylum for the deaf and dumb—were passed, in 1819 and 1826, the age still presented to us men who were concerned in making the Constitution, or men who were contemporaneous with it—some of whom occupied seats in both branches of the National Legislature.

Now, how were those acts passed? The first act, that of 1819, granting land for the benefit of the Connecticut asylum for the deaf and dumb, originated in the House of Representatives. On its second reading, March 1, 1819, Mr. Bassett, of Virginia, moved its commitment to a Committee of the Whole, but the motion was lost. Mr. P. P. Barbour moved its indefinite postponement; the motion was rejected. The bill was then ordered to be engrossed, and it was read a third time, and passed, no yeas and nays having been called. And, sir, in the House of Representatives, to mention no other distinguished individuals, there were then, from the State of Virginia, Mr. Phillip P. Barbour and Henry St. George Tucker. If there had been any real doubt, any serious question about the constitutionality of that measure, can we doubt for one moment that these gentlemen, knowing as we do their political connections and affinities, would have called for the yeas and nays upon that bill and shown by their votes that they did not concur in its passage?

That bill then came to the Senate; it was immediately read twice, and referred to the Committee on Public Lands. On the next day it was passed without a division, no yeas and nays having been taken. There were in the Senate at that day some gentlemen of no mean fame and consideration in this country. There were Mr. Daggett, of Connecticut; Rufus King and Nathan Sanford, of New York; Mahlon Dickerson and James J. Wilson, from New Jersey; Abner Lacock and Jonathan Roberts, from Pennsylvania; from Maryland, Robert H. Goldsborough; from Virginia, James Barbour and John W. Eppes; from North Carolina, Nathaniel Macon, than whom a stricter constructionist of the Constitution was not to be found; from South Carolina, Mr. Gaillard and William Smith; from Tennessee, John Williams and John H. Eaton. Yet among these gentlemen, many of them eminent members of the Democratic party, and afterwards leading members of the Jackson party, no one thought it necessary to demand the yeas and nays; and therefore no one thought that the measure was unconstitutional.

Now, sir, with regard to the bill passed in 1826, the act granting a township of land for the benefit of the Kentucky asylum for the deaf and dumb, I find, upon referring to Gales & Seaton's Register of Debates, that on the 28th of March, 1826, when the Senate proceeded to the consideration of that bill:

"Mr. COBB objected to the bill on principle, as an unconstitutional grant of common property for a partial or local purpose, and argued against the bill on that ground.

"A debate of wide extent, and considerable duration, ensued on the merits of the bill and the validity of the objections made to it by Mr. C., and on some of its details. The bill was supported by Messrs. ROWAN, JOHNSON, of Kentucky, BENTON, BARTON, EATON, HOLMES, LLOYD, MILLS, EDWARDS, HENDRICKS, and KING."

After debate, that bill was passed by a vote of yeas twenty-seven to nays six. I wish to call attention to this fact.

"Mr. COBB objected to the bill on principle, as an unconstitutional grant of common property for a partial or local purpose, and argued against the bill on that ground."

Then, it was either conceded on all hands at that time, that, if that bill had been general and equal in its application, it would have been constitutional; or the debate must, besides these matters, have embraced the question whether such a grant would be constitutional if general and equal. In the former [illegible]

a general acquiescence of the Senate in the constitutionality of it, if it had been for a general and equal purpose throughout the United States, and not local and partial. And in the other case, there was the judgment of an overwhelming majority that it was constitutional, notwithstanding its being local and partial. Now, sir, among those who voted in favor of that bill I find the following names: I will not read them all; I will not undertake to read some names which carry great weight with me; but I will read the names of gentlemen known for eminence in the Democratic party then and afterwards. Take notice that this vote was after discussion; it was after repeated discussion; after "a debate of wide extent, and considerable duration." Among the yeas I find the names of Mr. Benton, of Missouri; of Mr. Dickerson, of New Jersey; of Mr. John H. Eaton, of Tennessee; of Mr. Johnson, of Kentucky; of Mr. Kane, of Illinois; of Mr. King, of Alabama, our late Vice President; and, passing over several others, Mr. Rowan, of Kentucky; Mr. Hugh L. White, of Tennessee; and Mr. Woodbury, of New Hampshire, late a Judge on the bench of the Supreme Court of the United States.

Mr. BUTLER. Will my friend read the names of those who voted against the bill?

Mr. BADGER. The nays were Messrs. Branch of North Carolina, Chandler of Maine, Chase of Vermont, Cobb of Georgia, and Harper and Hayne of South Carolina.

Thus, in 1826, nearly thirty years nearer to the adoption of the Constitution than we are now, that bill passed by the vote which I have stated. In the House of Representatives, also, the yeas and nays were taken on the passage of the bill, and it passed by a vote of 120 to 43. Among the yeas, I find these names: Mr. Buchanan, of Pennsylvania, then in the House, since in this body, afterwards at the head of the State Department, and now our Minister at the Court of St. James; Mr. Cambreleng, of New York, then an eminent member of the Democratic party; Mr. Livingston, of Louisiana, Mr. McDuffie, of South Carolina, Mr. McLane, of Delaware, Mr. Polk—James K. Polk—of Tennessee, Mr. Saunders, of North Carolina, and Mr. Wickliffe, of Kentucky.

Thus, sir, that bill, after discussion in both Houses in the year 1826, passed in the Senate by a vote of 27 to 6, and in the House by a vote of 120 to 43; and what an array of names supporting it as both a constitutional and a rightful application of the public lands! Why, sir, a President of the United States, a Supreme Court Judge, foreign ministers, heads of Departments, persons high in the confidence of the Democratic party, members of the Cabinet of General Jackson, men of the highest character, strict constructionists! Who more eminent for that than the late Mr. McDuffie? Who more eminent for that than William R. King?—than James K. Polk?

Why, Mr. President, if we can place any reliance on authority; if we can imagine that it is possible, an exposition may be given to a clause of the Constitution by the concurrent judgments of the ablest and best men in our country, we have got it, as it seems to me, in the proceedings which took place upon the two bills to which the President has referred. Can it be said that Congress has no power to dispose of the public lands to the

bill which distributes a certain amount of the public lands, according to certain fair and equal rules among all the States of the Union, for the benefit of the indigent insane; and yet that, in 1819 and 1826, both Houses of Congress, after discussion, should have passed bills giving to institutions in two States, separately, grants for the benefit of the deaf and dumb; and that they should not have been wise enough to discover then, that if there was an objection to a grant, equal and general, there must be an overwhelming objection to a grant, singular and partial?

These two bills were not only passed by Congress, but each received the approval of the President. Mr. Monroe was President in 1819, and his Cabinet was composed of gentlemen of the very first ability that this country has ever produced. Mr. Calhoun was a member of his Cabinet, so was Mr. Adams, Mr. Crawford, and Mr. Southard. I believe that the bill referred to must have been the subject of careful consideration, when it was submitted to the President of the United States, on the question of constitutional power, had there been ground of doubt.

Now, Mr. President, upon the general power of the Government over this subject, I rest here, though I shall have incidentally occasion to refer to it again. I rest it upon the unqualified grant of power in the Constitution by words which import absolute dominion. I rest it upon the fact that it is an exclusive power in its nature which never could have existed in the States, and therefore it could not have been reserved to the States, nor could any part of it. I rest it upon the practice of the Government. I rest it upon the opinions of the most eminent men who have taken part in its deliberations, and the conduct of its affairs, or who have presided over its destinies. I proceed now to the consideration of the second objection.

The President of the United States suggests that the particular provisions of this bill assume some control, direction, or interference with the local affairs of the States which are not within the constitutional power of this Government. Now, sir, if this bill, fairly considered, assumes any control and direction over a State in this Union in the management of its local concerns, in matters reserved to it by the Constitution of the United States, then, beyond all doubt, it is a violation of the principles of that instrument, and it ought not to receive the sanction of the Senate. But does it? What does it do? It proposes to give these lands to the several States; and the substance of all its particular provisions is this: That the lands are to be sold, the money invested, and the interest only applied to the support of insane indigent persons under the care and jurisdiction of the State. What power of a State does it invade? Does it assume the control and direction of her indigent insane? Does it undertake to prescribe how they shall be treated, where located, who shall govern and manage them, the rules regulating the institutions in which they are placed, or any requisition as to how the accounts are to be settled in those institutions? Not at all. It gives to the States a certain amount of money, to be produced by the sales of these lands, the interest of which is to be applied by them to the support of the indigent insane in such institutions, under such regulations, and subject, in all respects, to such control as the States shall see proper to ex-

ercise over them. As I had occasion to say once, in some remarks made incidentally upon this subject, it is no more an invasion of the reserved rights of the States, or an attempt to control them in their domestic conduct, than a grant made by my honorable friend from Illinois, who sits beside me, [Mr. SHIELDS,] to myself of $10,000, to be applied for promoting and advancing my sons, for educating them, for putting them out as apprentices, for teaching them professions, or for giving marriage portions to my daughters, would be an invasion of my right to control and direct my own family.

But, Mr. President, if there is any apparent force in the objection, how are we to resist what has been done from almost the commencement of this Government? I have before me a list of grants of land to States for various objects, approved of by General Jackson and Mr. Polk during the time they were at the head of the Government, in which such conditions, or conditions liable to equal objection, were imposed.

If these acts are looked through, it will be found that Congress uniformly undertakes to direct what shall be done with the property which it grants, to what purposes it shall be applied, and prohibits its being applied to any other purposes. These grants are innumerable. I have tables of them here, but I will not fatigue the Senate by going over them, but will hand the list to the reporter, to be published in connection with these remarks. [See Appendix.]

Now, sir, if it be unconstitutional for Congress to grant to any of the old States a certain portion of the public lands, with a direction that the proceeds, the interest upon the amount realized from the sales of those lands, shall be applied to the support of an asylum for the insane, I wish to know whence the power was derived to give these directions, impose these conditions, and lay these restrictions upon the grants made to the new States? Are the new States less sovereign than the old States? Are they not equal members of this Union? Do they not all occupy a relation of perfect and precise equality of rights and powers?

The President vindicates these grants to the new States from the general constitutional objection, upon the ground that they are dispositions made by a prudent landholder for enhancing the value of the residue of his lands. But, putting aside for the present that as a source of power, who was the prudent landholder? The United States. Who represented the United States in the transaction? The Congress of the United States. Well, sir, if Congress, in giving these lands to one State has not power to direct the State authorities in their application, where does Congress get the power to do it in regard to another State? If we have not the power as a Congress, then there is an end of the matter; but if we have it at all as a Congress, we have it in respect to one State as well as another. But it is said we are in this respect to be regarded only as prudent landholders. Surely, by calling ourselves prudent landholders we do not acquire any power to regulate the domestic institutions of the States. If we have power to grant the lands, we can grant them, and impose such conditions as we may annex to the grant. If we have no power to grant the lands, with or without conditions, we cannot acquire it by calling ourselves prudent landholders. The act of grant was the act, in every instance, of the Government of the United States. It was, like every other act done by this Government, an act of sovereignty. It was not an act of a private person. It was not, and it cannot be made to be, a bargain merely, like that which would be transacted between my friend from Mississippi [Mr. BROWN] and myself in the transfer or purchase of lands or personal property. It was something more; it was an act of the sovereign authority of the United States; and if it exceeded the constitutional limits of that authority in one instance, it exceeded it in every one, unless you will affirm that the new States have not equal sovereignty and independence with the old States—the land States with those that have no public lands within their limits.

Sir, this whole subject is covered over with precedents. Those precedents run back for half a century. I have a list of them here before me. They have been voted by Congresses of every political description. They have been sanctioned, without question or hesitation, by Presidents of every various political shade that we have had. I believe that it will be very difficult, I believe it will be impossible, to maintain that, if the legislation of Congress in connection with the grants of lands to the new States was constitutional, in the view I am now taking of it, the legislation in this bill is unconstitutional in regard to the old States. Congress grants lands for the purpose of establishing schools. What does it require? Why, that the lands, or the proceeds of sale, shall be sacredly kept, and the interest and income applied to that purpose, and no other. It grants lands for the establishment of a university, with precisely the same restrictions. It grants lands for cutting a canal or for a railroad, with similar restrictions. And I pray you, sir, if these restrictions are not beyond our constitutional authority in regard to those States, in what possible manner do we invade the rights of the States by the condition annexed to the grant which the bill under the consideration of the Senate proposes to make to all the States?

As I have said, the fact of our assuming to act in the character of a land-owner can give us no power to control the States in their local concerns. If it be true that we can append no such conditions as this bill proposes to a grant of the public lands, then the conditions are void. Suppose they are, what is the consequence? Assume that the restrictions are invalid for want of constitutional power; then the grant takes effect, but is discharged of the condition. That is all. We, in that case, say to the States, "You shall have these portions of the public lands for the purpose, with the understanding, with the declaration that they are to be applied to the support of the indigent insane;" and on this supposition the States may pay just what respect and consideration they please to the restrictions that are thus attempted to be imposed, and may apply the proceeds of the lands in any way that they think proper. Undoubtedly that direction, or recommendation, or condition, or whatever you may please to call it, (upon the supposition that we have no constitutional power to prescribe it,) does not affect the grant, but leaves it a simple grant of the land discharged of the condition.

Mr. President, [illegible]

a good deal of examination of this subject, that, according to the uniform and established practice of this Government, and the opinions, so far as I can gather them from their conduct, of those who have been the ablest and wisest men that the nation has ever had, that there is no valid objection to the constitutional power to pass this bill, either as a disposition of the public lands, simply to the purposes specified in the bill, or on account of the conditions annexed to that disposition.

The President of the United States has remarked in his message, that the public domain constitutes a fund for the common benefit of the States; and, in that view, let us consider the matter upon the other supposition, that the United States stand merely in the character of trustees, holding these lands in trust for the common benefit of the several States in their sovereign capacities—a view which is commonly taken of this subject, and which, in the debates here in which I have taken part, in relation to the public lands, I have been content to assume as sufficient to answer the purposes of discussions then pending, though I believed in the power of the Government upon the general grounds I have now stated.

Suppose the Government of the United States to be such a trustee; for whom is it a trustee? I perceive that at the first indignation meeting which was held in the city of Boston upon the subject of the Nebraska bill, the persons who composed that meeting adopted a solemn resolution that the public lands were held in trust by the United States for the benefit of all the people in the United States who had no lands, natives and foreigners, and for all those foreigners who might hereafter come to the country. [Laughter.] I presume there is no gentleman here who would carry the idea of trusteeship quite as far as that. If we hold in the character of trustees, it is either for the benefit of all the people of the United States, and then it is no more than saying that this, like all our powers, is a public trust, or we hold for the common benefit of the different members of the Union. Well, if we do, how does that furnish any reason why we cannot grant the lands, which we hold as a trust fund for the common benefit of the members of the Union—the States—among the very members for whom we hold them as trustees? Is it not a curious argument? It is first said the United States are not owners of these lands, have no true property or dominion over them, but hold them merely as trustees? For whom are we trustees? For the common and equal benefit of all the States. It is proposed, then, to take a portion of these lands and apply them in a particular direction for the common and equal benefit of all the States. But we are told, "No; it is unconstitutional to do that; you have no rightful power to do it; you are compelled to hold them for your *cestui que* trusts; you are to keep them; you are not to let the parties for whom you hold have the benefit of them." The United States do not hold them, we are told, for their own benefit, but for the benefit of the several States; yet it is required that the trustee shall not permit the States to have the use or profit, although the only purpose for which the trustee holds is to benefit the several States on a common and equal footing of fairness.

You may, according to this doctrine, grant any which they are situated. You may go there as a landholder, and you may grant lands for universities, you may grant lands for primary schools, you may grant lands for canals and railroads, you may grant lands for court-houses and seats of government. All that, as a landholder, you have a right to do; but what becomes of the character of a trustee in the mean time? These ideas are not exactly reconcilable. If we are, in the true and proper sense of the term, landholders, if we own the lands, then we have the right to dispose of them. If we do not, if we are merely trustees for the benefit of all the States equally, where do we get the power, as trustees, to give away portions of these lands for the purpose of building colleges and erecting primary schools in the States in which they lie? The argument has been often urged, that when we grant them in alternate sections for canals and railroads, we double the price of the remaining sections; and this is the advantageous operation which is produced to the great landholder—the United States. I believe we all pretty well know, however, that the theory is not true in point of fact. It has been spoken of, and is what the law contemplates; but it is a result which the law has not produced. But assume that to be so, how is it that your prudent landholder gives away lands which do not belong to him, but which he holds in trust, for the erection of colleges and primary schools, for the building of court-houses, and for erecting seats of government? How do these bring money into the pockets of the owners of the lands? No otherwise than any prudent gift or disposition by an owner to those who will improve, may ultimately be of advantage to him. But they are not given upon any contracts or stipulations by which the value of the public lands is to be increased; and the whole thing, therefore, it seems to me, is entirely fallacious. If we are trustees, surely we may be allowed to give a small portion of those lands to all the States. If we are not trustees, if we are the owners, then the lands are ours, and we have a right to do with them as we think right and just; and in that respect, no constitutional objection at all can be taken to this disposition.

Mr. President, we are reduced to a very singular condition, in consequence of the interpretation given to our connection with these public lands. Now, let me ask the attention of the Senate for a moment, particularly with regard to the State which I have the honor here to represent, and, unfortunately, at present without any assistance. The State of North Carolina was one of those States which made a grant of her western territory to the United States; and it will be seen, on examination, that upwards of three millions and a half of acres of public lands, ceded by North Carolina upon the same general terms on which the cessions of Virginia and other States were made—that the lands should be a common fund for the benefit of all the States—were actually granted by act of Congress to the State of Tennessee. Upwards of three millions, obtained from North Carolina, were ceded by the United States in a body to the State of Tennessee, upon condition that Tennessee should apply $40,000 to endow a Tennessee college! What has North Carolina ever got of all the public lands? Nothing, except during a short period when an act of Congress prevailed [illegible] the proceeds of their sales among

the States. She gave up her western territory for the purpose of aiding in the general pacification and harmonious operation of the Government established under the Constitution. She gave it up expressly on the face of the cession, as a fund for the common and equal benefit of all the States, herself included. How happened it, then, that Congress got the power to grant that land to the State of Tennessee? Why, it could have been for no other reason in the world than because the land happened to be situated in the State of Tennessee.

But, inasmuch as the cession was made with the express purpose of establishing a State, it is very certain that North Carolina, when she granted that land to the General Government, in order that a State might be established, did not intend that it should be thereafter granted to that single State, excluding herself and every other member of the Union. She lost the whole of it. She has never received an acre of the public lands. She is told it is unconstitutional to give her anything. She is told the public lands may be given to anybody but to herself and other States, who are situated like herself. I do not complain of this cession to the State of Tennessee. I dare say, under the circumstances, it might have been a rightful cession. I do not mention it now as matter of complaint, but of illustration. I do not complain, as a general observation, of the cessions made to the new States for their universities and colleges, and primary schools, and roads and canals. There may have been extravagance and waste; but, upon principle, I do not object to a proper appropriation of a fair portion of these lands for the purpose of advancing the prosperity of those western States. I do object, however, to a principle which affirms, that while it is right, and lawful, and reasonable, and just to do all this, it is an enormous wrong, and a violation of the Constitution, to give to any of the old States any portion whatever, for any purpose, however good, of this public domain!

If that act of Congress to which I have referred could have been permitted to remain; if we could have prosecuted that division of the proceeds of the sales of the public lands among all the States, the State of North Carolina would, in the years that have passed since the distribution, have had paid into her treasury money that might be useful to her. So with regard to all the old States. I have had a careful estimate made, from which I find that, under the provisions of that law since 1841, there would have been, up to 1852, the net sum of $15,667,942 for distribution; of which North Carolina would have been entitled to $638,736. That, however, is stopped; it is found to be unconstitutional—to be unlawful—so to dispose of the proceeds of the sale of the public lands! They go into the Treasury; and, being in the Treasury, they cannot be taken out for the purpose of being distributed among those who are the rightful owners, as it is said, of the fund which produced them. Then we turn round and ask that you will give us a share of the lands themselves; but we are told, "No; the United States cannot do that; they hold these lands as trustees for you, and how can they hold them if they part with them to you? It is a violation of their trust; it is a violation of the constitutional obligations resting upon them."

may be satisfied with this admirable system of constitutional law, and equitable appropriation of a common fund. It may seem to them that they thus realize some fanciful abstraction, some constitutional vision of theoretic perfection, and this being done, that everything is accomplished which is necessary, and it becomes a matter of no importance what becomes of the domain, or to what purposes it is practically applied. But, sir, I, for one, am not satisfied with the reasoning which leads to such a result; and still less am I satisfied with it, when it is applied to the territory of the United States not ceded by the States, not put into the hands of the General Government upon any trust, express or implied, but which has been conquered by the arms of the United States, or acquired by treaties made by the United States. To hold the doctrine that the Government thus acquiring, having undoubtedly the whole eminent domain over it, being absolute proprietor, according to the laws of nations, has no power to permit, and is prevented by the principles of constitutional law and of justice and equity, from permitting, any part of that domain to go to the benefit and advantage of all the members of the Union, equally, may satisfy some minds, but it cannot satisfy mine.

It is said that you sell these lands, put the proceeds into the Treasury, and thus each of the States derives an equal or proportionate advantage from them. That idea is fallacious. We were to have the benefit of these granted lands as a common fund upon terms of equality. Well, you say you put the proceeds into the Treasury, and they go to our benefit? How so? Why, sir, there have been four times, yea, eight times as much money appropriated, since the establishment of this Government, within the State which my friend in my eye [Mr. CLAYTON] represents, than has ever been appropriated in any way by this Government for the benefit of the State of North Carolina. Now, with regard to the lands ceded, the rule laid down in the deeds of cession, if we are to advert to and be governed by them, was a plain one, that the proceeds of the lands should be a fund for the common and equal benefit of all the States, according to the usual and established rate of charge and expenditure—according to the compound principle upon which we are liable to contribution, or according to federal numbers. Then, when this money which is received from the public domain, goes into the Treasury, and is paid out in the ordinary expenditures of the Government, it does not return to the States upon the principle of the discharge of the duty of a trustee according to the terms of the deed under which he holds the trust. General Jackson says these lands were ceded originally at the earnest instance of Congress, first, to enable them to pay the war debt. That was paid. Then, he says, the lands remain to be disposed of for such purposes of general utility and advantage to the whole people as Congress may deem right. I am willing to take that ground. I am willing to own, if gentlemen please, that we are not to regard the further purposes expressed by the deeds of cession. If we are to lay that out of view, then, beyond all dispute, we have power to do as we think fair and right with the lands; but if we are to say that the provision of the deeds of

lands are to be applied as a common fund, for the benefit of all the States, according to the rule by which they are charged in contributions to the United States, then it is impossible to perform that trust, if you put the money into the Treasury. When the Government makes an appropriation, it makes it according to the general necessity. If the State of Delaware, from its position, has required that immense amounts of public money should be expended there, I admit they are well expended, and expended for the public advantage; but then that is not a disposition of this trust fund, if it be a trust fund, for the *equal* and *common* benefit of all the States. North Carolina claimed, Virginia claimed, all the States which made cessions of land claimed, that the proceeds of the lands should constitute a fund, for the equal and common benefit of all the States, the ceding State included. How is she included, if you take all, and appropriate it to one State? Is she included upon an equal and common footing if you give more to another State than you give to her in proportion to her population, size, importance, and contributions to the common Treasury of the nation?

Sir, to my understanding it is clear to demonstration: either there is a trust attached to those lands, or there is not. If there is no trust, and the United States own them as property, absolute property, in perfect ownership, then the power of disposition on the part of the United States is not only legally but morally complete and full. That power, whatever it is, the Constitution of the United States vests in Congress; and, therefore, Congress has power to dispose of the lands as it shall think fit and proper. Thus, in this view of the case, all constitutional objections must disappear. But if, with regard to the lands ceded to the United States by individual members of the Union, the trust subsists, why, sir, it is paltering with us in a double sense to say that you discharge that trust by selling the lands and putting the proceeds in the Trersury. You do not do it; you apply the fund to a purpose and in a manner which was not designed. The debt that it was to enable the Government to pay has long ago been discharged, and therefore the money, instead of being mixed with the general funds in the Treasury, ought, according to the principles of equity and right, if you annex the idea of a trust for the common benefit of all the States, to go to, and ought always to have been distributed among, the members of the Union, so soon as the previous pledge was satisfied. That would meet not only the law, but the equity and the justice of the case. That is what, if it were the case of a private trustee, any court of equity on earth would decree; and it is what, therefore, if we assume the principle of a trust, the Congress of the United States, in my judgment, is not only at liberty to do, but is bound to do.

Now, Mr. President, see the situation in which these old States have placed themselves. We have granted to asylums in Kentucky and Connecticut each twenty-three thousand and forty acres; and those two grants, I believe, constitute the whole amount of grants made for the benefit of any of the old States of the Union; while we have granted to the new States a quantity which, estimated at the ordinary low price which we fix worth $133,165,751. Sir, this cannot be right. Gentlemen may have logic for it; but it is impossible that it can commend itself to justice; and I may say that any system of reasoning which results in such a conclusion, is obliged to be fallacious. The States are equals in power and dignity. They have proportional rights in the public domain, upon the supposition of a trust. But whatever be the amount of the right, the right is perfect; and I should be ashamed to stand up and tell my constituents, "you have no ground of complaint; it is true, more than three millions of acres of lands ceded by you for the common purposes of the country have been granted by Congress to an individual State. More than $130,000,000 worth of land situated in the new States, has been granted to those States for various internal improvements and other local purposes. Not an acre has ever been appropriated for your benefit; yet it was held that the United States were a trustee for your benefit in common with all the other States of the Union; you can never have an acre appropriated for your benefit; you can never have an acre of any public land which may be obtained by treaty or by conquest at any time hereafter appropriated to your benefit; yet it is all right, it is all just. There is logic for it. The Constitution is against your having any of it. The Constitution says you are equals, but you must have nothing. The Constitution says it is a common fund for the benefit of all; but it must all be given to some; and therefore, although you get nothing, and they get all, you are obliged, by irresistible process of reasoning, to believe, for you cannot dispute the Constitution, that you have had all the time your full share, logically and constitutionally considered."

Sir, we are not to be gulled in that way in my part of the country. The idea of a principle is a very good thing; but a principle, to be of any value, must work out some practical and beneficial results. To tell me that a man holds my property for my benefit, as well as for the benefit of other people, and yet it is against the law of the trust to let me have any of it, is to assert a principle that would not commend itself either to my judgment or my interest; and, therefore, I should reject it, both with my heart and with my head. Hence, Mr. President, I say that, taking this subject in any view, the notion is fallacious. If these lands belong to the United States as property, without any trust, as all the lands we have acquired from foreign countries by treaty or by conquest, if we have ever acquired any by conquest, do belong to us; then there can be no objection to giving us a fair share of them. If they are held in trust for the common benefit of all, how, in the name of common sense, can it be possible that it is wrong to give all a share? I have heard it said often, that this trust is discharged by selling the lands and paying the money into the Treasury; but, I repeat, it is not so. When the money goes into the Treasury, it is not distributed among the States as a fund belonging to them as States, for their equal and common benefit. Not at all; but it is expended by the General Government just where the Government pleases, and in what amounts it pleases. I cited an instance to show how preposterous and absurd this argument is, in the comparison which I made between the State of Dela-

now, which I have a right to suppose, that all these funds had been produced by sales of the public lands; and I have a right to go further, and suppose, for the purpose of illustrating my argument, that all these funds had been produced by the sales of land ceded by North Carolina herself, and expressly ceded for the common and equal benefit of all the States, herself included; and then suppose it should turn out that between four and five millions of dollars had been expended in the small State of Delaware, and only about three hundred thousand dollars in North Carolina? Is it not plain to demonstration, that if you have the idea of such a trust, if you annex such a trust to the grant, this would not be carrying out the trust at all, but would be ignoring the trust, and violating every principle of integrity which should govern us in the administration of funds which we hold in a fiduciary character.

Why, Mr. President, what a spectacle we shall present this day to the eyes of the world! We are to consider it as established that this Government has no power to apply any part of the public domain—whether ceded by the individual members of the Union for the common benefit of all, or procured by the common exertions of the whole for the benefit of the whole—to these institutions, for which it is now sought to provide, appealing, as they do, to every heart and to every head; equally enlisting the best feelings and the best judgment of mankind in their favor. Congress can give lands for railroads, for canals, for colleges. It can give them for every purpose except the purpose of relieving that class of the community which has the strongest, and highest, and holiest claims upon our assistance! And all this, sir, upon the idea that we have formed a Constitution of government, which prohibits its being done! If our forefathers had formed such a constitution of government instead of deserving the name of sages, they would have deserved another epithet, which I have too great a respect for their memories to apply, even hypothetically, to them. Sages, indeed! to have given every power for mischief without limit or restriction, to put under the possession and control of this Government an immense public domain; in terms, to give the power to dispose of that domain, and, at the same time, to intend that it should only be disposed of for sectional purposes in distinct and separate portions of the country; and that the whole people of the United States, and the States of the Union generally, should be cut off from receiving any part of it! I have no notion—none on earth—that any such interpretation of the Constitution can be sustained.

Another objection taken by the message to this bill, is the pledge contained in the act of January 29, 1847, of the sales of the public lands for the payment of the stock created by that act. Mr. President, soon after I came into the Senate, when our debt was larger than it is now, when the Treasury was not full, and when the public creditor might deem the pledge of some importance, I urged in debate this very pledge as a reason against these large dispositions of the public domain. The reason was disregarded, grants numerous and vast were made, for donations to soldiers of all wars, besides the usual grants for local purposes in the new States. Now when the Treasury is overflowing, when the stock is in high credit, the holders care nothing about the lands as a security or a means of payment, this pledge is vainly urged against the present bill. Besides, sir, does any one suppose that this pledge will suffice to prevent the passage of the homestead bill, or any other scheme of extravagance and misapplication of the public domain?

No one supposes it. It is a question, not between the indigent insane and the public creditors, but between giving all, or nearly all, to the landless, and giving a small portion to this noble charity. In no event will the public creditor be regarded as holding a pledge upon the lands.

But, sir, there is another view of this subject; and that is, as to the rule which should govern the President of the United States in the exercise of the veto power. In the early history of the country, the question of the veto came under the consideration of General Washington, when he was President of the United States; and I wish to call the attention of the Senate for a moment, with a view of applying it to this subject, to what Mr. Jefferson thought of the nature of the power, and the circumstances under which it could rightfully be exerted. It is well known to us all that Mr. Jefferson held the bill for establishing the first Bank of the United States to be unconstitutional; and, upon a call from General Washington on certain members of his Cabinet for their views upon that subject, Mr. Jefferson sent him a very decided opinion that the proposed bill was unconstitutional. Mr. Jefferson, at the close of that paper, makes these remarks:

"The negative of the President is the shield provided by the Constitution to protect, against the invasions of the Legislature: 1st. The rights of the Executive. 2d. Of the Judiciary. 3d. Of the States and State Legislatures. *The present is the case of a right remaining exclusively with the States.*"

That was the point which Mr. Jefferson had sought to establish in his reasoning.

—"And is consequently one of those intended by the Constitution to be placed under his protection."

Mr. Jefferson confines the rightful exercise of the veto power to cases in which the President uses it to protest, against invasions of the Legislature, either upon the Executive or the judiciary, or upon the States and State Legislatures. He adds:

"It must be added, however, that unless the President's mind, on a view of everything which is urged for and against this bill, is *tolerably clear*, that it is unauthorized by the Constitution; if the *pro* and the *con*. hang so even as to *balance his judgment*, a just respect for the wisdom of the Legislature would naturally decide the balance in favor of their opinion. It is chiefly for cases where they are *clearly* misled by *error*, *ambition*, or *interest*, that the Constitution has placed a check in the negative of the President."

Now, Mr. President, whatever might be the inclination of the President's opinion, I appeal to you, sir, if, upon looking at the authorities to which I have referred the Senate—(the authorities of jurists and statesmen, the solemn exposition given to this Constitution by the Congress of the United States in the year 1826 by decided and overwhelming votes in both Houses, the great mass of legislation standing for its support upon principles which alone are required to support this)—they might not and ought not to have produced a pause, and doubt, and hesitation in the mind of the Executive whether this measure might not be constitutional? The opinion which the President of the

suggestion of his own mind. When this matter was brought before General Washington, at the incorporation of the first Bank of the United States, there were no precedents in the history of the country to which appeal could be had. It was a question of first impression. It had to be decided by Washington upon the argument and debate of the members of his Cabinet. He was obliged to rely upon these, and upon his own reflections, for he had nothing else upon which to rely. But suppose he had had precedents in abundance; suppose it had been a question arising sixty years afterwards; suppose the power had been exercised and acted upon in unnumbered instances, would the President of the United States have been at liberty to bring his individual judgment against the concurrent and repeated action of Congress, of the judiciary, and of the former Presidents? Would it not produce, at least, in the mind of any man who was not a President of the United States, an idea that possibly, yes, probably, he might have fallen into a mistake; that it was conceivable, after the opinions of so many men—men whose names I have called to the attention of the Senate—of the highest eminence in the country, men of the first talents and known patriotism, men who, though they never filled the station which he now occupies, were eminently qualified to adorn it, that it was quite possible that it might be a fair subject of doubt; and if a fair subject of doubt, then, according to the doctrine of Mr. Jefferson, a little respect was to come in for the existing Congress that passed the bill, and he was to presume that when that doubt existed, the measure might be constitutional, and therefore give it his approval.

I wish the President of the United States had taken this view of the subject; for surely, nothing can be so unhappy as to have one Constitution to-day and another to-morrow. We talk about amendments to the Constitution. We are all opposed to changes of it. We realize it as a great evil to have repeated, or incessant changes made in the fundamental law of the land; but I pray you, sir, if one President and one Congress do not pay a suitable respect to what has been decided and done by preceding Congresses and preceding Presidents—if the affairs of the Government are to be decided upon constitutional grounds, irrespective of precedent, upon the individual opinions of the President for the time being, and the Congress for the time being—do we not have, practically, a new Constitution from day to day? The Constitution consists not in that printed book, nor in the original from which it was printed. It is in the meaning of that book. It is in the rules given by that book. It is in the distribution of powers contemplated by the instrument; and it is infinitely more mischievous to have that instrument practically changed in its bearing and operation from day to day, than it would be to have it amended by legislative enactments every half dozen years. Sir, I think we might have asked the President of the United States to pause, and come to the conclusion that entire confidence could not be placed in the deductions to which he came, when he saw the array of great names to which I have called your attention this morning, who had come to different conclusions; and therefore, though he could not in his own mind overcome the opinion which he entertained, still to realize that it was a case of doubt, a case of question, a case where, after all, Congress might not improbably be right, and therefore not to use that extreme medicine of the Constitution, the veto, under circumstances when, perhaps, the constitutional instrument did not need its application.

Upon the whole, Mr. President, I do hope that when, now, for the first time in the history of the country, a measure has been passed throughboth Houses of Congress to do an act of general benefit and justice to all the States of the Union, to allow all to have some beneficial interest upon fair and equal terms in what is the common property of all, or in which all have a just claim to equitable participation, and when, above all, this is proposed to be done for a purpose appealing so strongly to the best feelings of our nature and our highest and most solemn obligations of duty to a most unfortunate and helpless class of our people, I do hope that there will be left yet power enough in this body to say, by a constitutional majority that, so far as depends upon them, the objections of the President shall not stand in the way of the adoption of this noble, this beneficent measure.

APPENDIX.

List of Grants of Lands to States for various objects.

April 2, 1830.—To Ohio, for canal from Dayton to Lake Eric, and for canals authorized by law.

May 29, 1830.—To vest in Indiana certain lands within the canal grant, &c.

May 31, 1830.—Appropriations for surveys and for works of internal improvement, &c.—roads, canals, &c.—approved in these words: "I approve this bill, and ask a reference to my communication to Congress of this date in relation thereto.

"ANDREW JACKSON."

January 19, 1831.—To repeal the provision in act May 3, 1822, which requires an annual account of the application of the three per cent. fund by the States, to be transmitted to the Secretary of the Treasury.

February 12, 1831.—Directing the manner in which certain canals shall be constructed in Alabama, which were provided for by grants of public land to that State.

March 2, 1831.—Appropriating a sum of money for the continuation of the Cumberland road in Ohio, Indiana, and Illinois, to be replaced out of the fund reserved from the sale of land in those States.

March 2, 1831.—Granting ten sections of land to Arkansas for the erection of a public building at the seat of government of that Territory.

March 2, 1831.—Two canals authorized to be opened by Florida through the public lands in that State *on certain conditions.*

April 20, 1832.—The Governor of the Territory of Arkansas authorized to lease Salt Springs, and apply proceeds to making roads therein.

June 15, 1832.—Granting one thousand acres of lands adjoining Little Rock, Arkansas, for a court-house and jail.

July 3, 1832.—Authorizing the Legislature of Indiana to sell and convey certain lands granted to said State, and to apply the proceeds to purposes of education.

March 2, 1833.—That lands granted for *a canal* to the State of Illinois may be used and disposed of for making *a railroad*, and *obligations attached.*

June 19, 1834.—To grant to the State of Ohio certain lands for the support of schools in the Connecticut Western Reserve, to be holden *by the same tenure*, and upon the *same terms and conditions* as lands before granted for same purpose.

June 30, 1834.—Granting thirty six sections of land to certain exiles from Poland, (23,040 acres.)

March 3, 1835.—To authorize the construction of a railroad upon the public lands in Florida, and granting land for the necessary uses of the same.

June 23, 1836.—Surplus revenue derived from lands and other sources, deposited or distributed among the several States *on conditions and restrictions.*

June 23, 1836.—Granting power to Alabama to sell certain lands for canals, giving the assent of Congress *to imposing tolls on said canal, upon certain conditions, and requiring an annual report to made to the Secretary of the Treasury of the rate and amount of such tolls, and of their application.*

January 13, 1831.—One section of land for the benefit of schools in Lawrence county, Mississippi.

July 3. 1832.—The State of Indiana authorized to sell certain tracts of land granted to that State, and *to apply the proceeds of said sale to the purposes of education.*

June 19, 1834.—One thirty-sixth part of the Connecticut Western Reserve in Ohio granted for the support of schools in that Reserve.

June 23, 1836.—A quanty of land equivalent in value to the sixteenth section granted for the use of schools within the reserved township in Monroe county, Indiana.

July 2, 1836.—One section of land granted for the use of common schools in township eight range eleven east, in the State of Mississippi.

June 12, 1838.—Two entire townships of land granted for a seminary of learning in the Territory of Wisconsin.

March 3, 1839.—One section of land granted for the use of schools in Oxford, Butler county, Ohio.

July 20, 1840.—Two townships of land granted for the support of a university within the Territory of Iowa.

Lands granted for various purposes by acts approved by James K. Polk, President of the United States:

July 29, 1846.—Land for a university in Arkansas, changed into seventy-two sections for common schools, or for the promotion of education in that State.

August 6, 1846.—Lands granted to Wisconsin:

1. Section sixteen in every township for use of schools.
2. Seventy-two sections for a university.
3. Ten sections for public buildings.
4. All salt springs, not exceeding twelve, with six sections of land adjoining each, for the use of the State.
5. Five per centum of the net proceeds of all the public lands in said State, for roads and canals.

August 7, 1846.—To surrender to Tennessee all the lands in that State south and west of a certain line, and the proceeds of land sold by that State under authority from the United States, for a college at Jackson, &c.

August 8, 1846.—Granted to Territory of Iowa:

One moiety, in alternate sections, five miles in width, on each side of the Des Moines river, to improve the navigation thereof.

August 8, 1846.—Granted to Wisconsin on admission into the Union—

One moiety, in alternate sections, equal to one half of three sections in width, on each side of the Fox and Wisconsin rivers and the lakes through which it passes, &c., for a canal, &c.

March 3, 1847.—Alabama authorized to locate a quantity of land, in any of the States or Territories, now due to the inhabitants within the Chickasaw cession in that State, &c.

June 16, 1848.—The two per cent. fund from the proceeds of the public lands relinquished by Mississippi, restored to that State for the construction of a railroad, &c.

August 11, 1848.—(The Cumberland road, lying in Indiana, surrendered to said State.)

August 14, 1848.—The title to land in Oregon, not exceeding six hundred and forty acres, now occupied as missionary stations among the Indians, and improvements confirmed and established in the several religious societies to which said missionary stations respectively belong. The sixteenth and thirty-sixth sections in each township in Oregon granted for the use of schools.

March 2, 1849.—The five per cent. of the net proceeds of the public lands and the five hundred thousand acres granted by the act of 4th September, 1841, confirmed to the State of Iowa.

March 2, 1849.—To aid Louisiana to construct the necessary levees and drains to reclaim the swamp and overflowed lands therein, *all* of those lands unfit for cultivation, granted to that State.

March 3, 1849.—The sixteenth and thirty-sixth sections in each township in Minnesota, granted for the use of schools.

Statement, showing the number of Acres of the Public Lands donated by Congress, the purposes for which donated, &c., in reply to resolution of the House of Representatives of Jan. 30, 1854.

States and Territories.	Schools.	Universities.	Seats of government.	Salines.	Internal improvements, 1841.*a*	Roads.	Canals and rivers.	Railroads.	Swamp lands.*b*	Deaf and dumb.	Individuals and companies.	Military services.	Aggregates.
Ohio	704,488	23,040	-	24,216	-	80,773	1,162,229	-	25,641	-	32,141	1,783,024	3,835,552
Indiana	650,317	23,040	2,560	23,040	-	170,582	1,439,279	-	1,286,827	-	843	1,225,336	4,821,824
Illinois	978,755	23,040	2,560	121,629	209,085	-	290,915	2,595,053	1,833,413	-	954	9,060,330	15,115,734
Missouri	1,199,139	23,040	2,560	46,080	500,000	-	-	2,442,240	2,178,716	-	-	2,288,323	8,680,098
Alabama	902,774	23,040	1,620	23,040	100,000	-	400,000	419,528	2,595	-	1,981	794,925	2,669,503
Mississippi	837,584	23,040	1,280	-	500,000	-	-	737,130	1,824,812	-	15,965	178,383	4,118,194
Louisiana	786,044	46,080	-	-	500,000	-	-	-	9,771,275	-	8,413	518,670	11,630,482
Michigan	1,067,397	46,080	13,200	46,080	500,000	-	750,000	-	6,788,125	-	4,080	1,108,003	10,322,965
Arkansas	886,460	46,080	10,600	46,080	500,000	-	-	2,189,200	8,690,017	-	139,366	1,645,273	14,153,976
Florida	908,503	46,080	6,240	46,080	500,000	-	-	-	2,065,605	-	52,114	291,400	3,916,022
Iowa	905,144	46,080	3,840	46,080	500,000	-	*e* 885,078	-	71,958	-	18,227	4,523,573	6,999,980
Wisconsin	958,648	46,080	6,400	-	360,364	-	569,372	-	1,239,269	-	5,706	2,467,497	5,673,336
California	6,719,324	46,080	6,400	-	500,000	-	-	-	No return	-	-	-	7,271,804
Minnesota Territory	5,089,224	-	-	-	-	-	*d* 340,000	-	-	-	-	105,520	5,534,744
Oregon Territorye	12,140,907	46,080	-	-	-	-	-	-	-	-	-	-	12,186,987
New Mexico Territory	7,493,120	-	-	-	-	-	-	-	-	-	-	-	7,493,120
Utah Territory	6,681,707	-	-	-	-	-	-	-	-	-	-	-	6,681,707
Connecticut	-	-	-	-	-	-	-	-	-	*f* 23,040	-	-	23,040
Tennessee	-	*g* 3,553,824	-	-	-	-	-	-	-	-	-	-	3,553,824
Kentucky	-	-	-	-	-	-	-	-	-	*h* 22,400	-	-	22,400
	48,909,535	4,060,704	57,260	422,325	4,669,449	251,355	5,836,873	8,383,151	35,798,253	45,440	279,790	25,990,257	134,704.392

Grants of Land by Congress for various objects to certain States and Territories, in the United States, being new or land States, &c.

States and Territories.	For schools and Universities.	For deaf and dumb asylums.	For individuals and companies.	For seats of government and public buildings.	Swamp lands.	For railroads	For other internal improvements.	Total granted.	Value at $1 25 per acre.	Amount of 5 per cent. fund from net proceeds public lands.	
	Acres.	*Acres.*	*Acres.*	*Acres.*	*Acres.*	*Acres.*	*Acres.*	*Acres.*	*Dollars.*	*Dollars.*	*Dollars.*
Ohio	727,528	-	32,141	-	25,640	-	1,243,001	2,028,310	2,535,387	966,892	3,502,279
Indiana	673,357	-	843	2,560	1,286,827	-	1,609,261	3,573,448	4,466,810	959,246	5,426,056
Illinois	1,001,795	-	954	2,560	1,833,412	2,595,058	500,000	5,933,779	7,417,223	873,042	8,290,265
Missouri	1,222,179	-	-	2,560	2,178,716	460,800	500,000	4,364,255	5,455,318	559,023	6,014,341
Alabama	925,814	21,949	1,981	1,620	2,595	230,400	500,000	1,684,359	2,105,448	635,170	2,740,618
Mississippi	860,624	-	15,965	1,280	1,824,812	549,120	500,000	3,731,801	4,664,751	746,449	5,411,200
Louisiana	832,124	-	8,412	-	9,771,275	-	500,000	11,111,811	13,889,763	214,193	14,103,956
Michigan	1,113,477	-	4,080	13,200	6,788,124	-	1,250,000	9,168,881	11,461,101	181,822	11,642,923
Arkansas	932,510	2,097	139,366	10,600	8,690,016	2,189,200	500,000	12,463,819	15,579,773	85,470	15,664,243
Florida	954,583	20,924	52,114	6,240	2,065,605	-	500,000	3,599,466	4,499,332	4,336	4,503,668
Iowa	951,224	-	18,226	3,840	71,958	-	1,385,078	2,430,326	3,037,907	16,422	3,038,329
Wisconsin	1,004,728	-	5,705	6,400	1,259,269	-	929,736	3,205,838	4,007,297	-	4,007,297
California	6,765,404	-	-	-	-	-	500,000	7,295,404	9,081,755	-	9,081,755
Minnesota	5,089,244	-	-	-	-	-	340,000	5,429,244	6,786,555	-	6,786,555
Oregon Territory	12,186,987	-	-	-	-	-	-	15,186,987	15,233,733	-	15,233,733
New Mexico Territory	7,493,120	-	-	-	-	-	-	7,493,120	9,366,400	-	9,366,400
Utah Territory	6,681,707	-	-	-	-	-	-	6,681,707	8,352.133	-	8,352,133
Connecticut (act March 3, 1819)		23,040									
Kentucky. (act April 5, 1826)		23,040									
Total granted for deaf and dumb asylums		91,050									$133,165,751

Notes to page 15.

a By the act of September 4, 1841, 500,000 acres of land was granted to each land State for purposes of internal improvements, provided that such States as had theretofore received grants for such purposes should, in addition, be entitled to select only so much as would make the above amount of 500,000. Ohio and Indiana having received more than that amount, were, of course, not entitled to any land under said act.

b Reported by State authorities and estimated.

c In part estimated.

d Estimated.

e Donations in Oregon not yet reported.

f Located principally in Alabama.

g The vacant lands in Tennessee, amounting to 3,553,824 acres, were granted to the State, provided $40,000, if the proceeds amounted to so much, be applied to establish and support a college.

h Located principally in Florida.

Appropriations for objects of Internal Improvements within the several States and Territories of the United States.

States and Territories.	*Amounts.*
Maine	$276,574
New Hampshire	10,000
Massachusetts	526,148
Vermont	101,000
Rhode Island	32,000
Connecticut	160,407
New York	1,652,115
New Jersey	28,963
Pennsylvania	207,981
Pennsylvania and Delaware	38,413
Delaware	2,038,356
Maryland, Pennsylvania, and Virginia.	1,901,227
Maryland	55,000
Virginia	25,000
North Carolina	370,377
Georgia	243,043
Florida	287,712
Alabama	$204,997
Mississippi	46,500
Louisiana	717,200
Tennessee	11,920
Kentucky and Tennessee	155,000
Arkansas	486,065
Missouri and Arkansas	100,000
Missouri	75,000
States through which western rivers pass—Ohio, Mississippi, Missouri, and Arkansas	1,698,000
Indiana	1,270,733
Illinois	993,601
Ohio	2,617,661
Michigan	645,724
Wisconsin	167,590
Iowa	75,000
	$17,199,223

Of which $11,191,438 were appropriated and approved by General Jackson, President.